

**As Introduced**

**133rd General Assembly**

**Regular Session**

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**H. B. No. 27**

**Representative Ingram**

**Cosponsors: Representatives Becker, Kent, Miller, A., Riedel, Weinstein**

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**A BILL**

To amend sections 2744.02 and 2744.05 of the 1  
Revised Code to modify political subdivision 2  
liability for an employee's negligent operation 3  
of a motor vehicle. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2744.02 and 2744.05 of the 5  
Revised Code be amended to read as follows: 6

**Sec. 2744.02.** (A) (1) For the purposes of this chapter, the 7  
functions of political subdivisions are hereby classified as 8  
governmental functions and proprietary functions. Except as 9  
provided in division (B) of this section, a political 10  
subdivision is not liable in damages in a civil action for 11  
injury, death, or loss to person or property allegedly caused by 12  
any act or omission of the political subdivision or an employee 13  
of the political subdivision in connection with a governmental 14  
or proprietary function. 15

(2) The defenses and immunities conferred under this 16  
chapter apply in connection with all governmental and 17  
proprietary functions performed by a political subdivision and 18

its employees, whether performed on behalf of that political 19  
subdivision or on behalf of another political subdivision. 20

(3) Subject to statutory limitations upon their monetary 21  
jurisdiction, the courts of common pleas, the municipal courts, 22  
and the county courts have jurisdiction to hear and determine 23  
civil actions governed by or brought pursuant to this chapter. 24

(B) Subject to sections 2744.03 and 2744.05 of the Revised 25  
Code, a political subdivision is liable in damages in a civil 26  
action for injury, death, or loss to person or property 27  
allegedly caused by an act or omission of the political 28  
subdivision or of any of its employees in connection with a 29  
governmental or proprietary function, as follows: 30

(1) Except as otherwise provided in this division, 31  
political subdivisions are liable for injury, death, or loss to 32  
person or property caused by the negligent operation of any 33  
motor vehicle by their employees when the employees are engaged 34  
within the scope of their employment and authority. ~~The~~ 35  
~~following are full defenses to that liability:~~ 36

~~(a) A member of a municipal corporation police department~~ 37  
~~or any other police agency was operating a motor vehicle while~~ 38  
~~responding to an emergency call and the operation of the vehicle~~ 39  
~~did not constitute willful or wanton misconduct;~~ 40

~~(b) A member of a municipal corporation fire department or~~ 41  
~~any other firefighting agency was operating a motor vehicle~~ 42  
~~while engaged in duty at a fire, proceeding toward a place where~~ 43  
~~a fire is in progress or is believed to be in progress, or~~ 44  
~~answering any other emergency alarm and the operation of the~~ 45  
~~vehicle did not constitute willful or wanton misconduct;~~ 46

~~(c) A member of an emergency medical service owned or~~ 47

~~operated by a political subdivision was operating a motor~~ 48  
~~vehicle while responding to or completing a call for emergency~~ 49  
~~medical care or treatment, the member was holding a valid~~ 50  
~~commercial driver's license issued pursuant to Chapter 4506. or~~ 51  
~~a driver's license issued pursuant to Chapter 4507. of the~~ 52  
~~Revised Code, the operation of the vehicle did not constitute~~ 53  
~~willful or wanton misconduct, and the operation complies with~~ 54  
~~the precautions of section 4511.03 of the Revised Code~~ 55  
political subdivision is not liable in damages for injury, 56  
death, or loss to person or property caused by an employee's 57  
negligent operation of a motor vehicle if the plaintiff, at the 58  
time of the alleged negligence, was attempting to flee from a 59  
law enforcement officer so as to avoid apprehension for a 60  
criminal offense. 61

(2) Except as otherwise provided in sections 3314.07 and 62  
3746.24 of the Revised Code, political subdivisions are liable 63  
for injury, death, or loss to person or property caused by the 64  
negligent performance of acts by their employees with respect to 65  
proprietary functions of the political subdivisions. 66

(3) Except as otherwise provided in section 3746.24 of the 67  
Revised Code, political subdivisions are liable for injury, 68  
death, or loss to person or property caused by their negligent 69  
failure to keep public roads in repair and other negligent 70  
failure to remove obstructions from public roads, except that it 71  
is a full defense to that liability, when a bridge within a 72  
municipal corporation is involved, that the municipal 73  
corporation does not have the responsibility for maintaining or 74  
inspecting the bridge. 75

(4) Except as otherwise provided in section 3746.24 of the 76  
Revised Code, political subdivisions are liable for injury, 77

death, or loss to person or property that is caused by the 78  
negligence of their employees and that occurs within or on the 79  
grounds of, and is due to physical defects within or on the 80  
grounds of, buildings that are used in connection with the 81  
performance of a governmental function, including, but not 82  
limited to, office buildings and courthouses, but not including 83  
jails, places of juvenile detention, workhouses, or any other 84  
detention facility, as defined in section 2921.01 of the Revised 85  
Code. 86

(5) In addition to the circumstances described in 87  
divisions (B) (1) to (4) of this section, a political subdivision 88  
is liable for injury, death, or loss to person or property when 89  
civil liability is expressly imposed upon the political 90  
subdivision by a section of the Revised Code, including, but not 91  
limited to, sections 2743.02 and 5591.37 of the Revised Code. 92  
Civil liability shall not be construed to exist under another 93  
section of the Revised Code merely because that section imposes 94  
a responsibility or mandatory duty upon a political subdivision, 95  
because that section provides for a criminal penalty, because of 96  
a general authorization in that section that a political 97  
subdivision may sue and be sued, or because that section uses 98  
the term "shall" in a provision pertaining to a political 99  
subdivision. 100

(C) An order that denies a political subdivision or an 101  
employee of a political subdivision the benefit of an alleged 102  
immunity from liability as provided in this chapter or any other 103  
provision of the law is a final order. 104

**Sec. 2744.05.** Notwithstanding any other provisions of the 105  
Revised Code or rules of a court to the contrary, in an action 106  
against a political subdivision to recover damages for injury, 107

death, or loss to person or property caused by an act or 108  
omission in connection with a governmental or proprietary 109  
function: 110

(A) Punitive or exemplary damages shall not be awarded. 111

(B) (1) If a claimant receives or is entitled to receive 112  
benefits for injuries or loss allegedly incurred from a policy 113  
or policies of insurance or any other source, the benefits shall 114  
be disclosed to the court, and the amount of the benefits shall 115  
be deducted from any award against a political subdivision 116  
recovered by that claimant. No insurer or other person is 117  
entitled to bring an action under a subrogation provision in an 118  
insurance or other contract against a political subdivision with 119  
respect to those benefits. 120

The amount of the benefits shall be deducted from an award 121  
against a political subdivision under division (B) (1) of this 122  
section regardless of whether the claimant may be under an 123  
obligation to pay back the benefits upon recovery, in whole or 124  
in part, for the claim. A claimant whose benefits have been 125  
deducted from an award under division (B) (1) of this section is 126  
not considered fully compensated and shall not be required to 127  
reimburse a subrogated claim for benefits deducted from an award 128  
pursuant to division (B) (1) of this section. 129

(2) Nothing in division (B) (1) of this section shall be 130  
construed to do either of the following: 131

(a) Limit the rights of a beneficiary under a life 132  
insurance policy or the rights of sureties under fidelity or 133  
surety bonds; 134

(b) Prohibit the department of medicaid from recovering 135  
from the political subdivision, pursuant to section 5160.37 of 136

the Revised Code, the cost of medical assistance provided under 137  
a medical assistance program. 138

(C) (1) There shall not be any limitation on compensatory 139  
damages that represent the actual loss of the person who is 140  
awarded the damages. However, except in wrongful death actions 141  
brought pursuant to Chapter 2125. of the Revised Code, damages 142  
that arise from the same cause of action, transaction or 143  
occurrence, or series of transactions or occurrences and that do 144  
not represent the actual loss of the person who is awarded the 145  
damages shall not exceed two hundred fifty thousand dollars in 146  
favor of any one person. The limitation on damages that do not 147  
represent the actual loss of the person who is awarded the 148  
damages provided in this division does not apply to court costs 149  
that are awarded to a plaintiff, or to interest on a judgment 150  
rendered in favor of a plaintiff, in an action against a 151  
political subdivision. 152

(2) Any compensatory damages recoverable against a 153  
political subdivision for an employee's negligent operation of a 154  
motor vehicle shall be reduced by the percentage of contributory 155  
fault attributable to the plaintiff or any other parties, 156  
subject to sections 2307.22, 2307.23, and 2315.32 to 2315.36 of 157  
the Revised Code. 158

(3) As used in this division, "the actual loss of the 159  
person who is awarded the damages" includes all of the 160  
following: 161

(a) All wages, salaries, or other compensation lost by the 162  
person injured as a result of the injury, including wages, 163  
salaries, or other compensation lost as of the date of a 164  
judgment and future expected lost earnings of the person 165  
injured; 166

(b) All expenditures of the person injured or another 167  
person on behalf of the person injured for medical care or 168  
treatment, for rehabilitation services, or for other care, 169  
treatment, services, products, or accommodations that were 170  
necessary because of the injury; 171

(c) All expenditures to be incurred in the future, as 172  
determined by the court, by the person injured or another person 173  
on behalf of the person injured for medical care or treatment, 174  
for rehabilitation services, or for other care, treatment, 175  
services, products, or accommodations that will be necessary 176  
because of the injury; 177

(d) All expenditures of a person whose property was 178  
injured or destroyed or of another person on behalf of the 179  
person whose property was injured or destroyed in order to 180  
repair or replace the property that was injured or destroyed; 181

(e) All expenditures of the person injured or of the 182  
person whose property was injured or destroyed or of another 183  
person on behalf of the person injured or of the person whose 184  
property was injured or destroyed in relation to the actual 185  
preparation or presentation of the claim involved; 186

(f) Any other expenditures of the person injured or of the 187  
person whose property was injured or destroyed or of another 188  
person on behalf of the person injured or of the person whose 189  
property was injured or destroyed that the court determines 190  
represent an actual loss experienced because of the personal or 191  
property injury or property loss. 192

"The actual loss of the person who is awarded the damages" 193  
does not include any fees paid or owed to an attorney for any 194  
services rendered in relation to a personal or property injury 195

or property loss, and does not include any damages awarded for 196  
pain and suffering, for the loss of society, consortium, 197  
companionship, care, assistance, attention, protection, advice, 198  
guidance, counsel, instruction, training, or education of the 199  
person injured, for mental anguish, or for any other intangible 200  
loss. 201

**Section 2.** That existing sections 2744.02 and 2744.05 of 202  
the Revised Code are hereby repealed. 203